

UNITED STATES DISTRICT COURT
for the
Eastern District of California

United States of America
v.
Marino Cruze DIAZ and David Moreno FLOREZ

Case No. 1:19-mj-151 SAB

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of August 2, 2019 in the county of Fresno in the
Eastern District of California, the defendant(s) violated:

| <i>Code Section</i> | <i>Offense Description</i> |
|---------------------|--|
| 21 U.S.C. 841(a)(1) | Manufacture Marijuana, a Schedule I Controlled Substance; |
| 21 U.S.C. 846 | Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute Marijuana, a Schedule I Controlled Substance. |
| 18 U.S.C. 924(c) | Possession of a firearm in furtherance of drug trafficking offense |
| | See penalty slip attached for maximum penalties. |

This criminal complaint is based on these facts:

See attached Affidavit of Special Agent Michael Grate, which is incorporated herein by reference.

☒ Continued on the attached sheet.

#414
Mike Grate 8/3/19 @ 9:15 pm
Complainant's signature

Michael Grate, Special Agent
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by

Date: Aug 3, 2019

Stanley A. Boone
Judge's signature

City and state: Fresno, CA

Hon. Stanley A. Boone
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I. AFFIANT'S TRAINING AND EXPERIENCE

I, Michael Grate, being duly sworn, do hereby swear or affirm:

1. I am a Special Agent (SA) with the United States Forest Service (USFS), and have been since August 2008. Prior to being a Special Agent with the USFS, I was a law enforcement officer (LEO) with the USFS for approximately one and a half years. Prior to being a LEO with the Forest Service I was a Law Enforcement Park Ranger with the National Park Service (NPS) for approximately 10 years. I am a graduate of the Federal Law Enforcement Training Center's Land Management Police Training Program (2001) and Criminal Investigator Training Program (2008). My primary duties include detecting, investigating, apprehending, and prosecuting criminal activity on and relating to National Forest System lands. I have the powers of a California State Peace Officer per California Penal Code section 830.8(b).

2. I have conducted numerous controlled substance investigations and have arrested/cited many persons for being under the influence, possession, manufacturing and transportation of various controlled substances and illegal-drug paraphernalia. I have investigated or participated in the investigation of numerous clandestine, outdoor, marijuana-cultivation sites on federal, state, and private lands. The marijuana-cultivation sites have been in various stages of production. I have flown marijuana-reconnaissance missions with officers and agents who have attended the DEA Aerial Cannabis Observation School and have spotted marijuana gardens by air. I have also taken part in marijuana-garden raid and reclamation operations, along with residential-search warrants related to marijuana-cultivation investigations.

3. While employed as an LEO, I attended an 80-hour Drug Enforcement Training Program course given by the USFS, which focuses specifically on marijuana-cultivation activities on Forest Service Lands. I have written and been the affiant on multiple search warrants, testified in front of a

1 Grand Jury and have written multi-jurisdictional operations plans all related to marijuana cultivation
2 investigations on public lands within the Eastern District of California.

3 4. During the course of my work, I have had the opportunity to converse with numerous
4 Law Enforcement Officers and drug-enforcement officers, informants, as well as admitted and known
5 drug traffickers, including outdoor-marijuana growers/traffickers, as to the methods, regarding the
6 manufacture, importation, transportation, distribution and sales of controlled substances. I have been the
7 affiant on federal search and arrest warrants and have testified in federal court in the area of narcotics.

8 5. I've authored, led, and executed numerous federal tracker warrants, search and arrest
9 warrants, Pen Registers, Trap and Trace Phone Toll Administrative Subpoenas, and authored a 78-page
10 federal TIII wire/phone tap affidavit approved by DEA, AUSA/DOJ, and USFS Washington Office.

11 6. Through prior investigations and training, I have become familiar with the types and
12 amounts of profits made by drug dealers including outdoor-marijuana growers/traffickers, and the
13 methods, language and terms that are used. I am familiar and have participated in various investigative
14 methods including, but not limited to, visual surveillance, interviewing of witnesses, search warrants and
15 use of confidential informants. I have worked joint investigations with various experienced Law
16 Enforcement Officers who are trained in narcotics investigations and I have drawn from their knowledge
17 and expertise in the field of narcotics enforcement.

18 7. Often, drug traffickers, including outdoor marijuana growers/traffickers, possess firearms
19 and other dangerous weapons to protect themselves or their contraband. Based on my training,
20 experience and discussions with other experienced narcotics agents, I know that firearms are often found
21 at marijuana cultivation sites on public lands.

22 8. I know that marijuana traffickers often cultivate marijuana on public lands throughout the
23 country, including the Eastern District of California.

1 9. Based on my training and experience, through discussions with experienced narcotics
2 investigators and through the information I have learned through investigations, I know that most
3 outdoor live-in marijuana cultivation operations are generally conducted in a similar manner. Outdoor
4 marijuana-cultivation operations involving large number of marijuana plants require substantial labor to
5 tend to the plants, provide logistical support for the labor force tending to the plants and provide
6 financial support until proceeds for the processed marijuana are received.

7 10. Outdoor marijuana-cultivation organizations start exploring and scouting potential
8 cultivation sites in the late winter and early spring. These organizations are normally in search of areas
9 in which the snow melts comparatively early, in close proximity to a viable water supply and isolated to
10 avoid encounters with recreationalists. Most outdoor marijuana cultivation organizations desire to plant
11 marijuana plants as early as possible in order to harvest the plants as early as possible and potentially
12 tend a second crop for the year before it becomes too cold in the late fall and early winter.

13 11. Additionally, during scouting excursions, these organizations attempt to identify drop
14 points that can be utilized for the delivery of supplies, equipment and people, which are in adjacent
15 proximity to the cultivators' trail heads and/or cultivation sites. A drop point is a designated location
16 where the drivers can deliver equipment, supplies and workers for the cultivations sites(s). Drop points
17 are normally located along a rural route so that the cultivation workers can walk the delivered supplies
18 to the camp area and the marijuana from the grow site to the drop point. It is normal to locate a distinct
19 trail system near the drop points. On most occasions, these organizations favor their drop points to be
20 located in remote areas where law enforcement and recreational traffic is scarce, in order to avoid
21 detection.

22 12. Once an outdoor marijuana-cultivation organization identifies possible cultivation sites,
23 the organization engages in procuring needed supplies to prepare the land and locate and set up a water
24 source for the cultivation site. In many cases, fertilizers, herbicides, pesticides and irrigation equipment

1 are acquired from various vendors, as well as through illegal sources, such as through smuggled items
2 brought into the United States.

3 13. As equipment and supplies for the marijuana grow site are procured, the outdoor
4 marijuana-cultivation organization starts to deliver items to the area of the marijuana-cultivation site.
5 Usually, these items are delivered to the pre-designated drop points.

6 14. The land is prepared for planting and watering of the marijuana plants. Once a natural
7 water source is identified and tapped into and a water reservoir is established, an irrigation system is
8 constructed. The natural vegetation is cut, removed or thinned to make space for the marijuana plants.
9 Locations for the camp are also established.

10 15. After the land has been prepared for planting, the marijuana seeds or plants are placed
11 into the ground. For cultivation sites that use live-in workers, camps are prepared and the live-in
12 workers establish unauthorized occupancy in the cultivation areas.

13 16. Throughout the growing season, which typically lasts between three and six months,
14 various supplies, equipment and groceries are purchased by or provided by individuals who deliver the
15 supplies to the grow sites. These individuals are frequently referred to as "lunch men." The lunch men
16 deliver needed supplies and workers to the designated drop point. The lunch men also retrieve
17 processed marijuana from the grow site and pick up workers from the marijuana-grow site.

18 17. As the marijuana plants mature, more workers arrive at the cultivation site(s) to help with
19 the labor involved in harvesting and processing of the marijuana buds. The harvested marijuana is laid
20 out to dry in processing areas within the cultivation site(s) and as it becomes dried, it is packaged and
21 moved to the drop point for pick up by the drivers for delivery to the distribution centers or to the
22 organizations leadership.

23 18. Outdoor marijuana-cultivation organizations recently have become more dependent on
24 the use of cellular telephones to facilitate communications in furtherance of their marijuana cultivation

1 scheme. Cellular telephones are used to communicate among co-conspirators, distributors, purchasers,
2 drivers, the laborers in the grow site(s) and their leaders. Communications include coordinating the
3 procurement of supplies and equipment and oversight of the progress of the tended to marijuana plants.
4 Some cultivation sites are located in areas where there is no cellular phone service. In these situations, a
5 designated check in time is established, in which the growers walk to an area where there is cellular
6 service to place their cellular-telephone calls.

7 19. Upon completion of harvesting the marijuana plants, the sites are abandoned, leaving
8 behind materials such as pesticides, herbicides, fertilizers, trash, propane tanks and food items. The
9 items left behind attract wildlife, such as bears, which attempt to eat the discarded items. The by-
10 products of marijuana cultivation have the capability of harming the environment and wildlife and
11 contaminating nearby water sources, such as creeks and streams.

12 **II. SUMMARY OF INVESTIGATION**

13 20. This investigation involves a marijuana cultivation site (the Greeley Road marijuana
14 cultivation site) located on public lands administered by the USFS in Fresno County, within the Eastern
15 District of California. The Greeley Road Marijuana cultivation site was discovered on July 22, 2019,
16 when I, Special Agent Michael Grate, followed up on a suspicious activity report from a local land
17 owner and observed live marijuana plants, in the location described below.

18 **III. PURPOSE OF AFFIDAVIT**

19 21. This affidavit is made in support of a criminal complaint and the issuance of arrest
20 warrants for Marino Cruze DIAZ and David Moreno FLOREZ. I have not included every detail of this
21 investigation in this affidavit. I have included only the information that is necessary to establish
22 probable cause for the purpose of charging.

IV. APPLICABLE LAW

22. This affidavit is based on violations of Title 21, United States Code, sections 841(a)(1) and 846, manufacturing marijuana and conspiracy to manufacture, to distribute, and to possess with intent to distribute marijuana, a schedule I controlled substance, and Title 18, United States Code, sections 924(c), possession of a firearm in furtherance of a drug trafficking offense.

23. The facts and information set forth herein are based upon my knowledge and observations, observations of other law enforcement personnel, my review of investigative materials, and conversations with federal and state law enforcement officials. This affidavit is intended to show there is probable cause for the requested complaint and arrest warrants and does not purport to include every fact known to me, rather, only those facts I believe necessary to establish probable cause. Title 21, United States Code, Section 841(a)(1), states it is unlawful for any person to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance. Title 21, United States Code, Section 846, states any person who attempts or conspires to commit any offense defined under Title 21 of the United States Code shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy. Title 18, United States Code, sections 924(c), provides additional penalties for the possession of a firearm in furtherance of a drug trafficking offense.

V. FACTS ESTABLISHING PROBABLE CAUSE

24. The below information is based on my own observations:

25. On July 19, 2019, Fresno County Narcotics Detective K. Yang informed United States Forest Service (USFS) law enforcement officer (LEO) C. Cagle of a reporting party (RP) who wanted to provide information regarding an illegal marijuana garden on USFS lands.

1 26. On July 22, 2019, at approximately 1 pm, I (Special Agent (SA) M. Grate) and LEO
2 Cagle contacted the RP¹ provided by detective Yang. RP is a private land owner bordering Sequoia
3 National Forest System (NFS) land. RP showed LEO Cagle and I a trail he believed went to a Drug
4 Trafficking Organization (DTO) marijuana garden. RP stated his son encountered a Hispanic male adult
5 (HMA) in camouflage clothing on his property a couple weeks prior. When his son confronted the
6 HMA, the HMA stated he had permission to grow marijuana in the area.

7 27. At approximately 2 pm, LEO Cagle and I followed the trail and observed three black
8 irrigation hoses, charged with water coming out of upper Mill Creek. LEO Cagle and I followed the
9 irrigation hoses for a short distance. The irrigation hoses led to a marijuana cultivation site, where LEO
10 Cagle and I observed numerous live marijuana plants growing in rows on USFS land at Global Position
11 Satellite (GPS) coordinates: **36° 42.565'N X 119° 3.545'W**. In that same location, LEO Cagle and I
12 observed a structure constructed from vegetation.

13 28. LEO Cagle and I located a second trail leaving Greeley Road, headed toward the
14 marijuana cultivation site. I followed the trail a short distance from the road where I located an area
15 where the soil had been impacted and the vegetation had been smashed down. The area also had food
16 trash and empty containers with Spanish labels. I recognized these indicators being consistent with a
17 DTO drop point, where marijuana garden/camp supplies items had been stashed in the bushes, thereby
18 impacting the soil and vegetation. In my training and experience the presence of Mexican labeled trash
19 in this context supports the conclusion of marijuana cultivators using a drop points to restock supplies
20 and discard trash they have accumulated conducting numerous food/supply drops.

21 29. At approximately 3 pm, SA Grate set a license plate reader (LPR) camera focused on the
22 drop point where the trail meets Greeley Road and a trail camera on the trail leading to the marijuana
23 cultivation site.

¹ Although I know who the reporting party is, I have omitted his name from this affidavit.

1 30. On July 25, 2019, I obtained a federal search warrant for the Greeley Road cultivation
2 site, signed by the Honorable Erica P. Grosjean. The search warrant authorized the search of the
3 undeveloped area at GPS coordinates N36°42'.565," W119° 03'.545," and any satellite sites.

4 31. On the morning of July 29, 2019, I retrieved images from a trail camera located near the
5 top of the trail leading to the marijuana cultivation site and images from a LPR camera located on
6 Greeley Road near a trail lading to the marijuana cultivation site. The trail camera images from July 28
7 revealed a dark colored four door, Dodge Avenger bearing California license plate 6MDK471, drive
8 north on Greeley Road, past the known DTO trail at approximately 4:31 pm and drive south on Greeley
9 Road, past the known trail at approximately 4:33 pm. Just minutes later (4:37 pm), the trail camera
10 captured images of a Hispanic female adult and Hispanic male adult walking down the trail toward the
11 marijuana cultivation site. No other vehicle was photographed demonstrating a similar driving pattern
12 and no other subjects were photographed on the trail leading to the marijuana cultivation site.

13 32. The Dodge Avenger is register to Omar SANTACRUZ residing at 2458 East Morgan
14 Ave. Exeter, CA.

15 33. On August 2, 2019, officers and agents with the U.S. Forest Service, California
16 Department of Fish and Wildlife and Fresno County Sheriff's Office raided the Greeley Road
17 Cultivation site and executed the search warrant.

18 34. At approximately 9:30 am, I observed several Hispanic male adults walking through the
19 marijuana-cultivation fields. I heard noises coming from their location consistent with hand tools being
20 used on vegetation and soil.

21 35. Five minutes later (9:35 am), I observed one of the same individuals who later identified
22 himself as Marino Cruze DIAZ, perched on a rock outcropping in a camp immediately adjacent to the
23 marijuana-cultivation site. Marino Cruze DIAZ was approximately 20-30 yards uphill from my location
24 in the marijuana-cultivation site. Marino Cruze DIAZ was looking directly at me and making a faint

1 whistling noise. (I believe he was attempting to determine if I was one of his partners.) I immediately
2 ran directly toward him with my gun drawn and repeatedly announced, "Police! Get on the ground!"
3 While I was attempting to handcuff Marino Cruze DIAZ, Department of Fish and Wildlife Officer Lens
4 ran up to my location pointing his firearm at another suspect behind me. Officer Lens yelled several
5 times, "Police! Drop it! Drop the weapon." I observed Officer Lens arrest and handcuff the individual
6 later identified as David Moreno FLOREZ. Officer Lens observed David Moreno FLOREZ carrying an
7 AR-15, short barrel rifle. Officer Lens observed the rifle was loaded and a round was in the chamber.
8 Officer Lens removed the ammunition from the AR-15. Officer Lens stated FLOREZ was walking
9 directly toward by back with the loaded assault rifle securely in both hands while I was attempting to
10 arrest DIAZ.

11 36. While officer Lens and I secured DIAZ and MARINO in handcuffs and searched them
12 for weapons, Department of Fish and Wildlife officer Hall entered the camp area and located a loaded
13 Winchester shotgun approximately 15-20 yards from the locations where officer Lens and I were
14 arresting David Moreno FLOREZ and Marino Cruze DIAZ. A wallet with Marino Cruze DIAZ
15 identification was located in very close proximity to the shotgun found in the camp area.

16 37. Marino Cruze DIAZ and David Moreno FLOREZ were both wearing soiled clothing and
17 smelled of marijuana. I observed the foot prints of their boots all throughout the marijuana cultivation
18 site and on the trail.

19 38. The Greeley Road cultivation site was photographed and video documented prior to and
20 post eradication. A total of 2,448 marijuana plants were eradicated from the Greeley Road cultivation
21 site.

22 **VI. OPINIONS AND CONCLUSION**

23 39. The facts in this affidavit come from my personal observations, my training and
24 experience, and information obtained from other agents and witnesses. This affidavit is intended to show

merely that there is sufficient probable cause for the requested arrests and does not set forth all of my knowledge about this matter.

40. Based on the foregoing, I submit there is probable cause to believe that Marino Cruze DIAZ and David Moreno FLOREZ violated Title 21, United States Code, Sections 841(a)(1) and 846, manufacture and conspiracy to manufacture, to distribute, and to possess with intent to distribute marijuana, a Schedule I controlled substance, and David Moreno FLOREZ violated Title 18, United States Code, sections 924(c), possession of a firearm in furtherance of a drug trafficking offense.

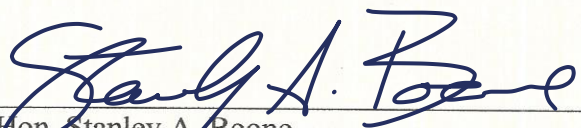
41. I swear under penalty of perjury that the facts presented are true and accurate to the best of my knowledge.

Respectfully submitted,

 #414 8/3/19

Michael Grate
Special Agent
United States Forest Service

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 on August 3, 2019



Hon. Stanley A. Boone
UNITED STATES MAGISTRATE JUDGE

Approved as to Form:

/s/ Justin J. Gilio
Justin J. Gilio
Assistant United States Attorney

United States v. Marino Cruze DIAZ et al.
Penalties for Criminal Complaint

Defendants

Marino Cruze DIAZ

David Moreno FLOREZ

COUNT 1: **ALL DEFENDANTS**

VIOLATION: 21 U.S.C. § 841(a)(1) – Manufacture 1,000 or More Marijuana Plants

PENALTIES: Mandatory minimum of 10 years in prison and a maximum of up to life in prison; or
Fine of up to \$10,000,000; or both fine and imprisonment
Supervised release of at least 5 years up to life

SPECIAL ASSESSMENT: \$100 (mandatory on each count)

COUNT 2: **ALL DEFENDANTS**

VIOLATION: 21 U.S.C. §§ 846, 841(a)(1) - Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute 1,000 or More Marijuana Plants

PENALTIES: Mandatory minimum of 10 years in prison and a maximum of up to life in prison; or
Fine of up to \$10,000,000; or both fine and imprisonment
Supervised release of at least 5 years up to life

SPECIAL ASSESSMENT: \$100 (mandatory on each count)

COUNT 3: **David Moreno FLOREZ**

VIOLATION: 18 U.S.C. § 924(c) – Possession of a Firearm in Furtherance of a Drug Trafficking Felony

PENALTIES: Mandatory minimum of five years in prison and a maximum of up to life in prison, to be served consecutively to any other sentence imposed; or
Fine of up to \$250,000 or both fine and imprisonment
Supervised release of up to 5 years

SPECIAL ASSESSMENT: \$100 (mandatory on each count)